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**MARTIN & FERRARO, LLP**  
1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632Telephone  
(330) 877-0700Facsimile  
(330) 877-2030**FACSIMILE TRANSMITTAL****TO:****FROM:****Name:** Office of Petitions**Name:** Thomas H. Martin, Esq.**Firm:** U.S. Patent & Trademark Office**Phone No.:** 330-877-0700**Fax No.:** 703-872-9306**No. of Pages (including this):** 33**Subject:** U.S. Patent Application No. 09/412,082**Date:** April 11, 2005

Gary Karlin Michelson

Filed: October 4, 1999

METHOD FOR INSERTING FRUSTO-CONICAL

INTERBODY SPINAL FUSION IMPLANTS

Attorney Docket No. 101.0052-01000

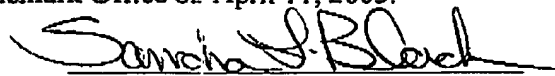
Customer No. 22882

**Confirmation Copy to Follow:** No**Message:****CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8**

I hereby certify that the attached Petition Under 37 C.F.R. § 1.181(a) For Withdrawal of Improper Notice of Abandonment with copy of June 29, 2001 Reply to Office Action, Terminal Disclaimer, Check #4175, and Certificate of Mailing, along with copy of PTO-stamped postcard receipt; copy of July 30, 2004 Status Inquiry, facsimile transmittal, confirmation report, and PTO Auto-Reply; copy of September 10, 2004 Amendment and Request for Interference, transmittal forms, confirmation report, and PTO Auto-Reply; and Declaration of Thomas H. Martin are being facsimile transmitted to the U.S. Patent and Trademark Office on April 11, 2005.

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PATENT

Attorney Docket No. 101.0052-01000

Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

|                           |   |                         |
|---------------------------|---|-------------------------|
| In re Application of:     | ) | Confirmation No.: 9192  |
| Gary Karlin Michelson     | ) |                         |
| Serial No.: 09/412,082    | ) | Group Art Unit: 3764    |
| Filed: October 4, 1999    | ) | Examiner: Michael Brown |
| For: METHOD FOR INSERTING | ) |                         |
| FRUSTO-CONICAL INTERBODY  | ) |                         |
| SPINAL FUSION IMPLANTS    | ) |                         |

Mail Stop PETITIONS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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OFFICE OF PETITIONS

Sir:

**PETITION UNDER 37 C.F.R. § 1.181(a)**  
**FOR WITHDRAWAL OF IMPROPER NOTICE OF ABANDONMENT**

Applicant respectfully petitions the Commissioner to withdraw this application from abandonment. Applicant received a Notice of Abandonment dated April 5, 2005, due to failure to respond to an Office letter mailed April 10, 2001. Applicant encloses, for the Commissioner's convenience, the following items:

1. A copy of the Reply to Office Action Under 37 C.F.R. § 1.111 and Terminal Disclaimer with transmittal form, Check #4175, and Certificate of Mailing dated June 29, 2001; along with a copy of the PTO-stamped postcard receipt.
2. A copy of a Status Inquiry with transmittal facsimile transmittal form, confirmation report, and PTO Auto-Reply dated July 30, 2004;
3. A copy of a further Amendment and Request for Interference Under 37 C.F.R. § 1.604 with transmittal forms, confirmation report, and PTO Auto-Reply dated September 10, 2004.
4. Declaration of Thomas H. Martin.

This Petition is being filed within two months from the action complained of pursuant to 37 C.F.R. § 1.181(f), and does not require a fee pursuant to MPEP 711.03(c)(I).

Applicant respectfully requests that the holding of abandonment be withdrawn, the Reply to Office Action and Terminal Disclaimer dated June 29, 2001, and the Amendment and Request for Interference dated September 10, 2004, be entered and considered on the merits.

If there are any fees due in connection with the filing of this Petition, please charge the fee to our Deposit Account 50-1066.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: April 8, 2005

By: Thomas H. Martin  
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030

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PLEASE STAMP TO ACKNOWLEDGE RECEIPT OF THE FOLLOWING:

In Re Application of: Gary K. Michelson, M.D.  
U.S. Serial No.: 09/412,082 Group Art Unit: 3764  
Filed: October 4, 1999 Examiner: M. Brown  
For: METHOD FOR INSERTING FRUSTO-CONICAL INTERBODY SPINAL FUSION  
IMPLANTS

1. Certificate of Mailing Via First Class Mail
2. Transmittal Letter (in duplicate)
3. Reply to Office Action Under 37 C.F.R. § 1.111
4. Terminal Disclaimer
5. Check in the amount of \$110.00

Dated: June 29, 2001  
Docket No. 101.0052-01000  
Customer No. 22882



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**KARLIN TECHNOLOGY INC-BENEFICIARY**  
 BANK OF AMERICA  
 AUTOMATED ACCOUNTING SERVICES  
 154 MONTGOMERY STREET  
 SAN FRANCISCO, CA 94104  
 TEL: 415 774 5110

**ATTORNEY TRUST ACCOUNT**  
 1000 AVENUE OF THE STARS, SUITE 100  
 LOS ANGELES, CA 90069

06/27/2001

PAY TO THE ORDER OF: **Hon. Commissioner of Patents & Trademarks**

\$ \*\*110.00

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U.S. Patent & Trademark Office

MFMO 101.0052-01000 Terminal Disclaimer Fee

110041751 1210003581 256581011311

*[Signature]*

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APR 11 2005

PATENT  
Attorney Docket No. 101.0052-01000  
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Gary K. Michelson

Serial No.: 09/412,082

Filed: October 4, 1999

For: Method for Inserting Frusto-Conical  
Interbody Spinal Fusion Implants

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

CERTIFICATE OF MAILING VIA FIRST CLASS MAIL

Date of Deposit: June 29, 2001

I hereby certify that:

1. Transmittal Letter (in duplicate)
2. Reply to Office Action Under 37 C.F.R. § 1.111
3. Terminal Disclaimer
4. Check in the amount of \$110.00
5. Self-addressed return postcard receipt

are being deposited with the United States Postal Service to Addressee with sufficient postage as first class mail under 37 C.F.R. § 1.8 on the date indicated above and are addressed to:

Assistant Commissioner for Patents  
Washington, D.C. 20231

Date: June 29, 2001

14500 Avion Parkway, Suite 300  
Chantilly, VA 20151-1101  
Telephone: 703-679-9300  
Facsimile: 703-679-9303

  
Sandra L. Blackmon

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FORM PTO-1083

Attorney Docket No.: 101.0052-01000  
Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

## In re application of:

Gary K. Michelson, M.D.

Serial No: 09/412,082

Filed: October 4, 1999

For: Method for Inserting Frusto-Conical  
Interbody Spinal Fusion ImplantsArt Unit: 3764  
Examiner: M. Brown

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Assistant Commissioner for Patents  
Washington, D.C. 20231

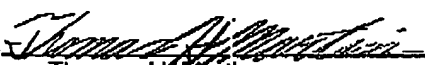
Dear Sir:

Transmitted herewith is a Reply to the Office Action dated April 10, 2001 in the above-identified application.

- ☐ No additional fee is required.
- ☐ Applicant hereby requests a \_\_\_ extension of time to respond to the above office action.
- ☒ Terminal Disclaimer.
- ☐ A fee in the amount of \$\_\_\_ to cover the extension of time is enclosed.
- ☒ A fee in the amount of \$110.00 to cover the Terminal Disclaimer is enclosed.
- ☒ A check in the amount of \$110.00 to cover the above fees is enclosed.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1066. A copy of this sheet is enclosed.
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,  
MARTIN & FERRARO, LLP

Date: June 28, 2001

By:   
Thomas H. Martin  
Registration No. 34,383  
Attorney for Applicant14500 Avion Parkway, Suite 300  
Chantilly, VA 20151-1101  
Telephone: 703-679-9300  
Facsimile: 703-679-9303

PATENT  
Attorney Docket No. 101.0052-01000  
Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Gary K. Michelson, M.D.

Serial No.: 09/412,082

Filed: October 4, 1999

For: METHOD FOR INSERTING  
FRUSTO-CONICAL INTERBODY  
SPINAL FUSION IMPLANTS

Group Art Unit: 3764

Examiner: M. Erown

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

**REPLY TO OFFICE ACTION UNDER 37 C.F.R. § 1.111**

The present application is a continuation of U.S. Application No. 08/480,904 (now U.S. Patent No. 6,210,412). Since the claimed subject matter of the present application is similar to that of the '412 patent mentioned above, Applicant is submitting herewith a Terminal Disclaimer of U.S. Application No. 09/412,082 over U.S. Patent No. 6,210,412.

In reply to the Office Action dated April 10, 2001 (Paper No. 8), it is submitted that claims 18-37 are allowable over the art of record for at least the reasons stated herein below.

In the Office Action, the Examiner rejected claims 18-24 and 29-37 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,263,953 to Bagby.

Bagby '953 teaches a coil fusion implant that is inserted into the disc space in a reduced diameter state. Upon insertion, the coil gradually expands to exert a force

Reply to OA of 4-10-01.doc

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radially outward (see abstract). Bagby '953 further teaches that "the bony surfaces are next prepared for implantation by cutting *cylindrical* longitudinal beds into them in configurations complementary to the exterior of the coils 10" (column 6, lines 30-34) (emphasis added).

Independent claim 18 includes the step of forming a bore with opposed arcuate portions in angular relationship to one another. Bagby '953 does not teach, disclose, or suggest the step of forming a bore having opposed arcuate portions in an angular relationship to one another as recited in independent claim 18.

The Examiner rejected dependent claims 25 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Bagby '953 in view of U.S. Patent No. 4,878,915 to Brantigan. The Examiner also rejected dependent claims 27 and 28 under 35 U.S.C. § 103(a) as being unpatentable over Bagby '953 in view of Brantigan '915 and U.S. Patent No. 3,875,595 to Froning. Applicant submits that the Examiner's rejection of these claims are rendered moot at least in view of the patentability of independent claim 18, which Applicant submits is in condition for allowance. Thus, Applicant submits that dependent claims 25-28 are also allowable because they depend directly or indirectly from an independent claim which is believed to be allowable over the cited references.

Applicant submits that independent claim 18 is patentable and that dependent claims 19-37 dependent from independent claim 18, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

Applicant submits that the rejections of claims 18-37 over the art of record have been overcome.


Reply to OA of 4-10-01.doc

If there are any fees due in connection with the filing of this response, please charge our Deposit Account Number 50-1066. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for in the papers accompanying this response, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: June 28, 2001

By:   
Thomas H. Martin  
Registration No. 34,383  
Attorney for Applicant

14500 Avion Parkway, Suite 300  
Chantilly, Virginia 20151-1101  
Telephone: (703) 679-9300  
Facsimile: (703) 670-9303

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PATENT  
Attorney Docket No. 101.0052-01000  
Customer No. 22882**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Gary K. Michelson

Serial No.: 09/412,082

Filed: October 4, 1999

For: METHOD FOR INSERTING  
FRUSTO-CONICAL INTERBODY  
SPINAL FUSION IMPLANTSAssistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Group Art Unit: 3732

Examiner: M. Brown

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OFFICE OF PATENTS**TERMINAL DISCLAIMER**

Petitioner ("inventor/owner") Gary Karlin Michelson, residing at 438 Sherman Canal, Venice, California 90291, represents that he is the only inventor/owner of the entire right, title and interest in and to the above-identified application, Serial No. 09/412,082 filed October 4, 1999 for METHOD FOR INSERTING FRUSTO-CONICAL INTERBODY SPINAL FUSION IMPLANTS and is the only inventor/owner of the entire right, title and interest in and to application Serial No. 08/480,904, filed June 7, 1995 (now U.S. Patent No. 6,210,412), for METHOD FOR INSERTING FRUSTO-CONICAL INTERBODY SPINAL FUSION IMPLANTS. Inventor/owner Gary Karlin Michelson further represents through his representative that to the best of his knowledge and belief, title to the above-identified application and the United States Patent No. 6,210,412 are in inventor/owner, which is submitting this Terminal Disclaimer.

To obviate a double patenting rejection, Gary Karlin Michelson hereby disclaims, under the provisions of 37 C.F.R. § 1.321, the terminal part of any patent granted on the above-identified application, Serial No. 09/412,082, which would extend beyond the expiration date of Patent No. 6,210,412 and hereby agrees that any patent so granted on the above-identified application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to United States Patent No. 6,210,412, this agreement to run with any patent granted on the above-identified application and to be binding upon the grantee, its successors or assigns.

In making the above disclaimer, Petitioner does not disclaim the terminal part of any patent granted on application Serial No. 09/412,082 that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §§ 154 to 156 and 173 of Patent No. 6,210,412, as presently shortened by any terminal disclaimer, in the event that Patent No. 6,210,412: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or in part, is terminally disclaimed under 37 C.F.R. § 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term, as presently shortened by any terminal disclaimer.

In accordance with the fee schedule set forth in 37 C.F.R. § 1.20(d), the required fee of \$110.00 is being filed with this disclaimer.

If a check for the required fee is not filed concurrently herewith or if there are any additional fees due in connection with the filing of this reply, please charge the fees to our Deposit Account No. 50-1066. If a fee is required for an extension of time under 37

C.F.R. 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

The undersigned is authorized to act on behalf of Petitioner Gary Karlin Michelson.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: 6/28/01

By: Thomas H. Martin  
Thomas H. Martin  
Registration No. 34,383

14500 Avion Parkway - Suite 300  
Chantilly, VA 20151-1101  
Telephone: 703-679-9300  
Facsimile: 703-679-9303

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| <b>MARTIN &amp; FERRARO, LLP</b><br>1557 Lake O'Pines Street, NE<br>Hartsville, Ohio 44632 |                           |
| Telephone<br>(330) 877-0700  | Fax No.<br>(330) 877-2277 |

| FACSIMILE TRANSMISSION  |  |
|---|--|
| TO:   | FROM:  |
| Name: Mail Stop AMENDMENT   | Name: Thomas H. Martin, Esq.                           |
| Firm: U.S. Patent & Trademark Office  | Phone No.: 350-877-2277                                |
| Fax No.: 703-572-0306   | No. of Pages (including this): 2                       |
| Subject: U.S. Patent Application No. 09/412,082<br>Gary K. Michelson<br>Filed: October 4, 1999<br>METHOD FOR INSERTING FRUSTO-CONICAL<br>INTERBODY SPINAL FUSION IMPLANTS<br>Attorney Docket No. 101.0052-01000<br>Customer No. 22882 | Date: July 30, 2004<br>Confirmation Copy to Follow: NO |

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PAGE 1/2 \* RCVD AT 7/30/2004 3:33:57 PM [Eastern Daylight Time] \* SVR:USPTO-EFAXF-1/1 \* DNIS:8729306 \* CSID:3308772030 \* DURATION (mm:ss):10:16

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## TO:

Name: Mail Stop AMENDMENT  
Firm: U.S. Patent & Trademark Office  
Fax No.: 703-872-9306  
Subject: U.S. Patent Application No. 09/412,082  
Gary K. Michelson  
Filed: October 4, 1999  
METHOD FOR INSERTING FRUSTO-CONICAL  
INTERBODY SPINAL FUSION IMPLANTS  
Attorney Docket No. 101.0052-01000  
Customer No. 22882

## FROM:

Name: Thomas H. Martin, Esq.  
Phone No.: 330-877-2277  
No. of Pages (including this): 2  
Date: July 30, 2004

Confirmation Copy to Follow: NO

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Sandra L. Blackmon

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| <b>Name:</b> Mail Stop AMENDMENT   | <b>Name:</b> Thomas H. Martin, Esq.                                      |
| <b>Firm:</b> U.S. Patent & Trademark Office  | <b>Phone No.:</b> 330-877-2277   |
| <b>Fax No.:</b> 703-872-9306   | <b>No. of Pages (including this):</b> 2                                  |
| <b>Subject:</b> U.S. Patent Application No. 09/412,082<br>Gary K. Michelson<br>Filed: October 4, 1999<br>METHOD FOR INSERTING FRUSTO-CONICAL<br>INTERBODY SPINAL FUSION IMPLANTS<br>Attorney Docket No. 101.0052-01000<br>Customer No. 22882 | <b>Date:</b> July 30, 2004<br><br><b>Confirmation Copy to Follow:</b> NO |

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Sandra L. Blackmon

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PATENT  
Attorney Docket No. 101.0052-01000  
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Gary K. Michelson )  
Serial No.: 09/412,082 )  
Filed: October 4, 1999 )  
For: METHOD FOR INSERTING )  
FRUSTO-CONICAL INTERBODY )  
SPINAL FUSION IMPLANTS )

Group Art Unit: 3764  
Examiner: M. Brown

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

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**STATUS INQUIRY**

Applicant filed a Reply to Office Action Under 37 C.F.R. § 1.111 on June 29, 2001 in the above-identified application, and the undersigned has yet to receive a further communication from the Examiner. Please advise the undersigned on the current status of the above-identified application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1066.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: July 30, 2004

By: Thomas H. Martin  
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030

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| 09-10-2004 18:26 | From-MARTIN&FERRARO,LLP | 3308772030 | T-206 P.001 F-415 |
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| <b>TO:</b><br>Name: Mail Stop AMENDMENT<br>Group Art Unit 3764/Examiner Michael Brown<br>Firm: U.S. Patent & Trademark Office<br>Fax No.: 703-672-9306<br>Subject: U.S. Patent Application No. 09/412,082<br>Gary K. Michelson<br>Filed: October 4, 1999<br>METHOD FOR INSERTING FRUSTO-CONICAL<br>INTERBODY SPINAL FUSION IMPLANTS<br>Agency Docket No. 101-0032-01000<br>Customer No. 22842<br>Confirmation No. 9192 | <b>FROM:</b><br>Name: Thomas H. Martin, Esq.<br>Phone No.: 330-877-2277<br>No. of Pages (including this): 12<br>Date: September 10, 2004<br>Confirmation Copy to Follow: NO |
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**CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8**

I hereby certify that the attached Transmittal Form (in duplicate; \$18.00) additional claims for to be charged to Deposit Account No. 50-1066), Amendment, and Request for Interference Under 37 C.F.R. § 1.604 are being facsimile transmitted to the U.S. Patent and Trademark Office on September 10, 2004.

Sandra L. Blackmon

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PAGE 1/12 \* RCVD AT 9/10/2004 5:54:18 PM [Eastern Daylight Time] \* SVR:USPTO-EFXXF-1/1 \* DNIS:8729306 \* CSID:3308772030 \* DURATION (mm:ss):10:16

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1557 Lake O'Pines Street, NE  
Hartsville, Ohio 44632

Telephone  
(330) 877-2700

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## FACSIMILE TRANSMITTAL

TO:  
Name: Mail Stop AMENDMENT  
Group An Unit 3764/Examiner Michael Brown  
Firm: U.S. Patent & Trademark Office  
Fax No.: 703-872-9306  
Subject: U.S. Patent Application No. 09/412,082  
Gary K. Michelson  
Filed: October 4, 1999  
METHOD FOR INSERTING FRUSTO-CONICAL  
INTERBODY SPINAL FUSION IMPLANTS  
Attorney Docket No. 101.0052-01000  
Customer No. 22882  
Confirmation No.: 9192

FROM:  
Name: Thomas H. Martin, Esq.  
Phone No.: 330-877-2277  
No. of Pages (including this): 12  
Date: September 10, 2004  
Confirmation Copy to Follow: NO

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## FACSIMILE TRANSMITTAL

**TO:** **FROM:**

**Name:** Mail Stop AMENDMENT **Name:** Thomas H. Martin, Esq.

**Group Art Unit 3764/Examiner Michael Brown**

**Firm:** U.S. Patent & Trademark Office **Phone No.:** 330-877-2277

**Fax No.:** 703-872-9306 **No. of Pages (including this):** 12

**Subject:** U.S. Patent Application No. 09/412,082 **Date:** September 10, 2004

Gary K. Michelson

**Filed:** October 4, 1999 **Confirmation Copy to Follow:** NO

**METHOD FOR INSERTING FRUSTO-CONICAL**

**INTERBODY SPINAL FUSION IMPLANTS**

**Attorney Docket No. 101.0052-01000**

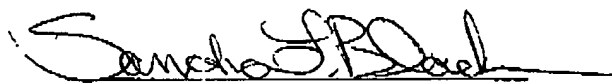
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**Confirmation No.: 9192**

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## CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

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Sandra L. Blackmon

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FORM PTO-1083

APR 11 2005

Attorney Docket No.: 101.0052-01000  
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Gary K. Michelson  
Serial No.: 09/412,082  
Filed: October 4, 1999  
For: METHOD FOR INSERTING  
FRUSTO-CONICAL INTERBODY  
SPINAL FUSION IMPLANTS

Confirmation No.: 9192

Group Art Unit: 3764

Examiner: M. Brown

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Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is an Amendment in the above-identified application.

- ☐ No additional fee is required.
- ☐ Applicant hereby requests a \*\*\*-month extension of time to respond to the above office action.
- ☒ A Request for Interference Under 37 C.F.R. § 1.604 is enclosed.

The fee has been calculated as shown below:

|  | (Col. 1)<br>CLAIMS REMAINING<br>AFTER AMENDMENT |   | (Col. 2)<br>HIGHEST NUMBER<br>PREVIOUSLY PAID FOR | (Col. 3)<br>PRESENT<br>EXTRA* | LG/SM<br>\$ ENTITY FEE                               | ADD'L<br>FEE DUE |
|--|---|---|---|-------------------------------|--|------------------|
| TOTAL CLAIMS FEE                                 | 21  | - | 20  | 1                             | LG=\$18<br>SM=\$9                                    | \$ 18.00         |
| INDEPENDENT<br>CLAIMS FEE                        | 2   | - | 3   | 0                             | LG=\$98<br>SM=\$43                                   | \$ 0             |
| FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIMS: |   |   |   |                               | LARGE ENTITY FEE = \$280<br>SMALL ENTITY FEE = \$140 | \$ 0             |
| TOTAL  |   |   |   |                               |  | \$ 18.00         |

\* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, write "20" in this space.

\*\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, write "3" in this space. The "Highest Number Previously Paid For" (Total or Independent) is the highest number found from the equivalent box on Col. 1 of a prior amendment or the number of claims originally filed.

- ☒ A fee in the amount of \$18.00 to cover the additional claims is to be charged to Deposit Account No. 50-1066.
- ☐ A check in the amount of \$\_\_\_ to cover the \*\*\*-month extension of time fee is enclosed.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1066. A copy of this sheet is enclosed.
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,  
MARTIN & FERRARO, LLP

Date: September 10, 2004

By: Thomas H. Martin  
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: 330-877-0700  
Facsimile: 330-877-2030

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FORM PTO-1083

Attorney Docket No.: 101.0052-01000  
Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Gary K. Michelson )  
Serial No.: 09/412,082 )  
Filed: October 4, 1999 )  
For: METHOD FOR INSERTING )  
FRUSTO-CONICAL INTERBODY )  
SPINAL FUSION IMPLANTS )

Confirmation No.: 9192

Group Art Unit: 3764  
Examiner: M. Brown

COPY

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is an Amendment in the above-identified application.

- ☐ No additional fee is required.  
☐ Applicant hereby requests a \*\*\*-month extension of time to respond to the above office action.  
☒ A Request for Interference Under 37 C.F.R. § 1.604 is enclosed.

The fee has been calculated as shown below:

|  | (Col. 1)<br>CLAIMS REMAINING<br>AFTER AMENDMENT |   | (Col. 2)<br>HIGHEST NUMBER<br>PREVIOUSLY PAID FOR | (Col. 3)<br>PRESENT<br>EXTRA* | LG/SM<br>\$ ENTITY FEE                               | ADD'L<br>FEE DUE |
|--|---|---|---|-------------------------------|--|------------------|
| TOTAL CLAIMS FEE                                 | 21  | - | 20  | 1                             | LG=\$18<br>SM=\$9                                    | \$18             |
| INDEPENDENT<br>CLAIMS FEE                        | 2   | - | 3   | 0                             | LG=\$88<br>SM=\$43                                   | \$88             |
| FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIMS: |   |   |   |                               | LARGE ENTITY FEE = \$280<br>SMALL ENTITY FEE = \$140 | \$0              |
| TOTAL  |   |   |   |                               |  | \$18.00          |

\* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, write "20" in this space.

\*\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, write "3" in this space. The "Highest Number Previously Paid For" (Total or Independent) is the highest number found from the equivalent box on Col. 1 of a prior amendment or the number of claims originally filed.

- ☒ A fee in the amount of \$18.00 to cover the additional claims is to be charged to Deposit Account No. 50-1066.  
☐ A check in the amount of \$\_\_\_ to cover the \*\*\*-month extension of time fee is enclosed.  
☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1066. A copy of this sheet is enclosed.  
☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims  
☒ Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,  
MARTIN & FERRARO, LLP

Date: September 10, 2004

By: 

Thomas H. Martin

Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: 330-877-0700

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**PATENT**  
Attorney Docket No. 101.0052-01000  
Customer No. 22882

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: )  
Gary K. Michelson )  
Serial No.: 09/412,082 )  
Filed: October 4, 1999 )  
For: METHOD FOR INSERTING )  
FRUSTO-CONICAL INTERBODY )  
SPINAL FUSION IMPLANTS )

Confirmation No.: 9192

Group Art Unit: 3764  
Examiner: M. Brown

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Alexandria, VA 22313-1450

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**AMENDMENT**

Prior to the examination of the above-identified application, the following  
amendments and remarks are submitted:

**Amendments to the Claims** are reflected in the listing of claims, which begins on  
page 2 of this paper.

**Remarks** begin on page 6 of this paper.

Amendment 9-10-04

Application No. 09/412,082  
Amendment dated September 10, 2004

### **AMENDMENTS TO THE CLAIMS:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

#### **Listing of Claims:**

Claims 1-17. (cancelled)

18. (previously presented) A method for inserting a spinal implant across a disc space between adjacent vertebral bodies of a human spine, said method comprising the steps of:
  - distracting said adjacent vertebral bodies to the adjacent vertebral bodies;
  - forming a bore from the anterior or posterior aspect of the spinal column across the distracted disc space between said adjacent vertebral bodies and into the adjacent vertebral bodies, said bore having opposed arcuate portions in an angular relationship to one another along at least a portion of each of the adjacent vertebral bodies; and
  - inserting into said bore said spinal implant having opposed arcuate portions in an angular relationship to one another along the length of said implant and oriented toward the adjacent vertebral bodies.
19. (previously presented) The method of claim 18, wherein said inserting step includes the sub-step of inserting said implant having a generally frusto-conical configuration.
20. (previously presented) The method of claim 19, wherein said inserting step includes the sub-step of inserting said implant having a generally round cross section transverse to the longitudinal axis of said implant.
21. (previously presented) The method of claim 18, wherein said inserting step includes the sub-step of inserting said implant having a generally oval cross section transverse to the longitudinal axis of said implant.
22. (previously presented) The method of claim 18, wherein said inserting step includes the sub-step of inserting said implant having at least one truncated side.



Application No. 09/412,082  
Amendment dated September 10, 2004

23. (previously presented) The method of claim 18, wherein the distracting step includes the sub-step of inducing angulation to the adjacent vertebral bodies
24. (previously presented) The method of claim 18, wherein the distracting step includes the step of inserting a spinal distractor into the disc space between the adjacent vertebral bodies.
25. (previously presented) The method of claim 24, further comprising the step of positioning a sleeve over said spinal distractor and into contact with the adjacent vertebral bodies.
26. (previously presented) The method of claim 18, wherein the distracting step includes the step of positioning a sleeve having an extension for insertion into the disc space and for bearing against end plates of the adjacent vertebral bodies.
27. (previously presented) The method of claim 26, wherein the step of inserting includes the sub-step of inserting said implant through said sleeve and into the bore.
28. (previously presented) The method of claim 26, wherein the positioning step includes the sub-step of inducing angulation to the adjacent vertebral bodies.
29. (previously presented) The method of claim 18, wherein the forming step includes the sub-step selected from one of milling and drilling the bore.
30. (previously presented) The method of claim 18, wherein the forming step further comprises the sub-step of placing a drill having a diameter greater than the disc space through said sleeve prior to the sub-step of drilling.
31. (previously presented) The method of claim 18, further comprising the step of loading said implant with a material selected from one of a fusion promoting substance, a bone growth promoting material, bone morphogenetic protein, and bone prior to the step of inserting.
32. (previously presented) The method of claim 18, further comprising the step of coating said implant with a material selected from one of bone morphogenic protein, a fusion promoting substance, and a bone growth promoting material prior to the step of inserting.

Application No. 09/412,082  
Amendment dated September 10, 2004

33. (previously presented) The method of claim 18, wherein the step of inserting includes inserting an implant containing a material selected from one of a fusion promoting substance, a bone growth promoting material, bone morphogenetic protein, and bone.
34. (previously presented) The method of claim 18, wherein the step of inserting includes inserting an implant comprising a material selected from one of a bone growth promoting material, bone morphogenetic protein, and bone.
35. (previously presented) The method of claim 18, wherein the step of inserting includes inserting an implant in combination with a material selected from one of a bone growth promoting material, bone morphogenetic protein, and bone.
36. (previously presented) The method of claim 18, further comprising the step of placing an inner sleeve within said sleeve prior to the step of forming the bore.
37. (previously presented) The method of claim 36, further comprising the step of removing said inner sleeve prior to the step of inserting said implant.
38. (new) A method for preparing a spinal disc space between a pair of vertebral endplates for insertion of an implant therebetween, comprising:
  - inserting a guide sleeve to the disc space from an anterior approach, the guide sleeve having a working channel providing access to a first disc space location and a second disc space location;
  - distracting the disc space to a desired disc space height;
  - preparing the first disc space location through the working channel for insertion of a first implant therein;
  - inserting a reamer plug through the working channel into the first disc space location;
  - preparing the second disc space location through the working channel for insertion of a second implant therein after inserting the reamer plug;
  - inserting the second implant through the working channel into the second disc space location, the second implant being tapered to establish a desired lordotic angle between the vertebral endplates;
  - removing the plug from the first disc space location after inserting the

Application No. 09/412,082  
Amendment dated September 10, 2004

second implant; and

inserting the first implant through the working channel into the first disc space location, the first implant being tapered to establish a desired lordotic angle between the vertebral endplates.

Application No. 09/412,082  
Amendment dated September 10, 2004

### REMARKS

Applicant added new claim 38 to provoke an Interference with U.S. Application No. 10/631,241 (Publication No. 2004/0024408) to Burkus et al. under 37 C.F.R. § 1.604. Claim 1 is supported by the specification at least on page 18, line 19 to page 20, line 34; page 22, lines 1-19; Fig. 4; and in U.S. Application Serial No. 08/074,781, now U.S. Patent No. 5,484,437, the disclosure of which is incorporated by reference on page 2, lines 6, 10, and 11.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1066.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: September 10, 2004

By: Thomas H. Martin  
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030

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Attorney Docket No. 101.0052-01000  
Customer No. 22882

APR 11 2005

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Gary K. Michelson )  
Serial No.: 09/412,082 )  
Filed: October 4, 1999 )  
For: METHOD FOR INSERTING )  
FRUSTO-CONICAL INTERBODY )  
SPINAL FUSION IMPLANTS )

Confirmation No.: 9192

Group Art Unit: 3764  
Examiner: M. Brown**COPY**

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR INTERFERENCE UNDER 37 C.F.R. § 1.604**

Applicant hereby requests an interference with U.S. Application No. 10/631,241 (U.S. Publication No. 2004/0024408) to Burkus et al. (hereinafter, "Burkus") pursuant to 37 C.F.R. § 1.604(a). A proposed count is attached hereto.

Claim 16 of Burkus corresponds to claim 1 of the proposed count. Claim 38 of the present application corresponds to claim 1 of the proposed count.

Applicant requests an interference with Burkus because the aforementioned claim of Burkus covers subject matter which was invented by Applicant prior to the earliest priority date of Burkus.

Applicant submits that the subject matter of claim 1 of the proposed count is fully supported by Applicant's original disclosure, for example, on page 18, line 19 to page 20, line 34; page 22, lines 1-19; Fig. 4; and in U.S. Application Serial No. 08/074,781, now U.S. Patent No. 5,484,437, the disclosure of which is incorporated by reference on page 2, lines 6, 10, and 11. The Examiner is requested to declare an interference between the present application and U.S. Application No. 10/631,241.


Request for Interference 9-10-04

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1066.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: September 10, 2004

By:   
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: 330-877-0700  
Facsimile: 330-877-2030

**PROPOSED COUNT UNDER 37 C.F.R. § 1.604(a)(1)**

1. A method for preparing a spinal disc space between a pair of vertebral endplates for insertion of an implant therebetween, comprising:
  - inserting a guide sleeve to the disc space from an anterior approach, the guide sleeve having a working channel providing access to a first disc space location and a second disc space location;
  - distracting the disc space to a desired disc space height;
  - preparing the first disc space location through the working channel for insertion of a first implant therein;
  - Inserting a reamer plug through the working channel into the first disc space location;
  - preparing the second disc space location through the working channel for insertion of a second implant therein after inserting the reamer plug;
  - inserting the second implant through the working channel into the second disc space location, the second implant being tapered to establish a desired lordotic angle between the vertebral endplates;
  - removing the plug from the first disc space location after inserting the second implant; and
  - Inserting the first implant through the working channel into the first disc space location, the first implant being tapered to establish a desired lordotic angle between the vertebral endplates.

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Customer No. 22882

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|                           |   |                         |
|---------------------------|---|-------------------------|
| In re Application of:     | ) | Confirmation No : 9192  |
| Gary Karlin Michelson     | ) |                         |
| Serial No.: 09/412,082    | ) | Group Art Unit: 3764    |
| Filed: October 4, 1999    | ) | Examiner: Michael Brown |
| For: METHOD FOR INSERTING | ) |                         |
| FRUSTO-CONICAL INTERBODY  | ) |                         |
| SPINAL FUSION IMPLANTS    | ) |                         |

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**DECLARATION OF THOMAS H. MARTIN**

Thomas H. Martin declares as follows:

This declaration is made in support of the above-identified patent application. I am the attorney for applicant of the above-identified patent application. The facts set forth in this declaration are based on my own first-hand knowledge.

On June 29, 2001, applicant filed a Reply to the Office Action dated April 10, 2001 and a Terminal Disclaimer. After receiving no further communication from the Examiner, applicant filed a Status Inquiry on July 30, 2004. Thereafter, applicant filed a further Amendment and Request for Interference on September 10, 2004.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under

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Section 1001 of Title 1 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

April 8, 2005

Date



Thomas H. Martin